DOCKET NO.: 243327US8/phm

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: Daisuke KITAZAWA, et al.

GROUP: 2618

SERIAL NO: 10/673,327

EXAMINER: SAFAIPOUR, BOBBAK

FILED: September 30, 2003

FOR: TRANSMISSION POWER CONTROL METHOD, COMMUNICATION DEVICE, AND RADIO COMMUNICATION SYSTEM

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s). No more than five (5) pages are provided.

I am the attorney or agent of record.

Respectfully Submitted,

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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF	:
DAISUKE KITAZAWA, ET AL.	: EXAMINER: SAFAIPOUR, BOBBAK
SERIAL NO: 10/673,327	:
FILED: SEPTEMBER 30, 2003	: GROUP ART UNIT: 2618
FOR: TRANSMISSION POWER CONTROL METHOD, COMMUNICATION DEVICE, AND RADIO COMMUNICATION SYSTEM	:

REMARKS ACCOMPANYING PRE-APPEAL BRIEF REQUEST FOR REVIEW

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

Applicants respectfully request that a Pre-Appeal Brief Conference be initiated in accordance with the pilot program outlined in the Official Gazette Notice of July 12, 2005.

Claims 1-3, 5 and 9 are pending in this application. In the Final Official Action of February 29, 2007 (herein, Final Official Action), Claims 1 and 3 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 5,991,618 to Hall in view of U.S. Patent No. 6,792,248 to Naghian; and Claims 2, 5 and 9 were rejected under 35 U.S.C. § 103(a) as unpatentable over Hall in view of U.S. Patent No. 6,374,117 B1 to Denkert et al. (hereinafter Denkert).

The Final Official Action asserts that the combination of Hall and Naghian teaches all the features recited in Claims 1 and 3. Applicants respectfully traverse this rejection.

Independent Claim 1 relates to a transmission power control method in a radio communication system comprising a base station and mobile stations. Specifically, independent Claim 1, recites, *inter alia*, a transmission power control method, comprising:

> determining that a communication to be transmitted from the base station to the mobile station is either real-time traffic or non-real time traffic ***based on at least one of a transmission delay, maximum transmission count and reception error rate corresponding to the communication***...

Independent Claim 3, while directed to an alternative embodiment, recites substantially similar features.

In addressing the above emphasized "determining" feature, the Advisory Action of May 8, 2007 (herein, Advisory Action) cites col. 3, lines 15-35 of Hall stating that "the power margin requirements may be different for voice (or other real time data) communication modes because there is usually not time available to retransmit erroneous voice data, while time is usually available to retransmit erroneous data packets..."

Thus, as noted in the Advisory Action, the cited portion of Hall describes that the power requirements may differ for various communication modes, but Hall fails to teach or suggest that a communication mode is ***determined*** based on any of the parameters noted above recited in independent Claims 1 and 3. More specifically, Hall describes at col. 3, lines 10-14 that to determine the current communications mode, the process examines registers in a transmit control circuit wherein such registers are responsible for configuring a transmitter, including a data modulator, in a subscriber unit. This is clearly not determining the mode of communication based on parameters "corresponding to the communication" such as those recited in independent Claims 1 and 3. Instead, the communications mode is determined based on registers that are responsible for configuring the transmitter.

The Advisory Action continues by citing col. 4, lines 10-30 of Hall asserting that this cited portion of the references "discloses reception error rate." However, this cited portion of

Hall simply describes that the process may permit or deny a request to change transmission modes based on whether the subscriber unit can support communications at a higher data rate. This process is clearly different from determining whether a communication is real-time or non-real time based on a parameters corresponding to the communication, as recited in independent Claims 1 and 3.

Hall, therefore, fails to teach or suggest "determining that a communication to be transmitted from the base station to the mobile station is either real-time traffic or non-real time traffic ***based on at least one of a transmission delay, maximum retransmission count and reception error rate corresponding to the communication***," as recited in independent Claim 1.

Further, Naghian fails to remedy the above noted deficiency of Hall. Therefore Hall and Naghian, neither alone, nor in combination, teach or suggest the above noted features recited in independent Claim 1, and Applicants respectfully request that the rejection of independent Claims 1 and 3 under 35 U.S.C. 103 be withdrawn.

The outstanding Official Action rejected Claims 2, 5 and 9 under 35 U.S.C. 103(a) as being unpatentable over Hall in view of Denkert. Applicants respectfully traverse this rejection as Denkert fails to teach or suggest the claimed features for which it is asserted as a secondary reference under 35 U.S.C. 103.

Independent Claim 2 relates to a transmission power control method in a radio communication system comprising a base station and mobile stations in which data is retransmitted (e.g., the same data is transmitted multiple times) when not received properly at the mobile station. Specifically, independent Claim 2 recites, *inter alia*, a transmission power control method,

> wherein a transmission power margin... ***is set so that the transmission power margin increases as the data retransmission count in an uplink or in a downlink increases.***

Independent Claims 5, and 9, while directed to alternative embodiments, recite substantially similar features.

The Final Official Action admits that Hall fails to teach or suggest the above-emphasized step of setting the transmission power based on a retransmission count in the uplink or downlink. In an attempt to remedy this deficiency, the Official Action relies on Denkert. The Advisory Action cites col. 3, lines 10-35 and col. 4, line 59-col. 5, line 40 of Denkert in rejecting Claims 2, 5 and 9 and asserts that the reference "discloses that a downlink transmit power for a packet can be increased... to reduce the remaining delay."

However, as noted in the Advisory Action, Denkert describes that downlink power is adapted based on a queue time of a data packet or the prioritization of a packet. Thus, as the queue time of a particular data packet stored in a buffer approaches a threshold time, the transmit power for that packet can be increased to reduce the remaining delay associated with receiving that packet at the other end of the connection. Denkert, therefore, simply describes increasing a transmission power to increase the speed at which a queued packet is transmitted, but fails to teach or suggest adjusting a transmission power based on a data ***retransmission count.***

Further, the Advisory Action states that "it is obvious to one of ordinary skill in the art if the power margin is increases, then the retransmission must also increase." However, this does not make sense as an increase in power is intended to decrease the transmission count.

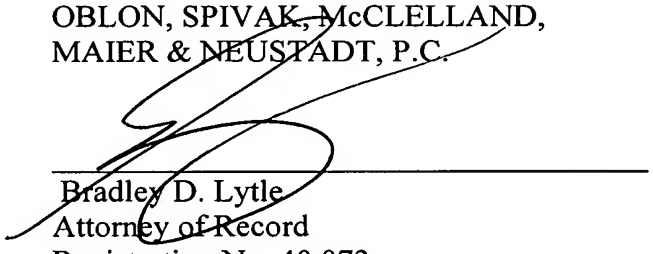
Nonetheless, Hall and Denkert, neither alone, nor in combination, teach or suggest setting a transmission power margin so that ***the transmission power margin increases as the data retransmission count*** in an uplink or in a downlink increases, as recited in independent Claim 2.

Accordingly, Applicants respectfully request that the rejection of independent Claims 2, 5 and 9 under 35 U.S.C. 103 be withdrawn.

Based on the above-noted deficiencies in the outstanding rejections, Applicant respectfully requests that those rejections be withdrawn or properly supported.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



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